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ELASTICSEARCH, INC. and  
ELASTICSEARCH B.V.  
8

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 ELASTICSEARCH, INC., a Delaware  
12 corporation, ELASTICSEARCH B.V., a Dutch  
corporation,  
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14 Plaintiffs,

15 v.

16 FLORAGUNN GmbH, a German corporation,  
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18 Defendant.  
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Case No. 4:19-cv-05553-YGR

**STIPULATED ~~[PROPOSED]~~**  
**PROTECTIVE ORDER**

STIPULATED ~~[PROPOSED]~~  
PROTECTIVE ORDER  
CASE NO. 4:19-cv-05553-YGR

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1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
5 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
6 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
7 or of a Party's competitor.

8 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
9 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
10 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
11 less restrictive means.

12 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
13 extremely sensitive "Confidential Information or Items" representing computer code and  
14 associated comments and revision histories, formulas, engineering specifications, or schematics  
15 that define or otherwise describe in detail the algorithms or structure of software or hardware  
16 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
17 serious harm that could not be avoided by less restrictive means.

18 2.9 House Counsel: attorneys who are employees of a party to this action. House  
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
21 entity not named as a Party to this action.

22 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this  
23 action but are retained to represent or advise a party to this action and have appeared in this action  
24 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.12 Party: any party to this action, including all of its officers, directors, employees,  
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.14 Professional Vendors: persons or entities that provide litigation support services  
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
4 organizing, storing, or retrieving data in any form or medium) and their employees and  
5 subcontractors.

6 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
7 “CONFIDENTIAL,” as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as  
8 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

9 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
10 Producing Party.

### 11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material  
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
16 However, the protections conferred by this Stipulation and Order do not cover the following  
17 information: (a) any information that is in the public domain at the time of disclosure to a  
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
19 a result of publication not involving a violation of this Order, including becoming part of the  
20 public record through trial or otherwise; and (b) any information known to the Receiving Party  
21 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the Designating  
23 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

### 24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by  
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court  
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all

1 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
2 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
3 including the time limits for filing any motions or applications for extension of time pursuant to  
4 applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
7 or Non-Party that designates information or items for protection under this Order must take care  
8 to limit any such designation to specific material that qualifies under the appropriate standards.  
9 To the extent it is practical to do so, the Designating Party must designate for protection only  
10 those parts of material, documents, items, or oral or written communications that qualify – so that  
11 other portions of the material, documents, items, or communications for which protection is not  
12 warranted are not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
15 unnecessarily encumber or retard the case development process or to impose unnecessary  
16 expenses and burdens on other parties) expose the Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it designated  
18 for protection do not qualify for protection at all or do not qualify for the level of protection  
19 initially asserted, that Designating Party must promptly notify all other parties that it is  
20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
22 (see, e.g., second paragraph of Paragraph 5.2(a) below), or as otherwise stipulated or ordered,  
23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents, but  
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
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1 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
3 protected material. If only a portion or portions of the material on a page qualify for protection,  
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
5 appropriate markings in the margins) and must specify, for each portion, the level of protection  
6 being asserted.

7 A Party or Non-Party that makes original documents or materials available for inspection  
8 need not designate them for protection until after the inspecting Party has indicated which  
9 material it would like copied and produced. During the inspection and before the designation, all  
10 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
11 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
12 copied and produced, the Producing Party must determine which documents, or portions thereof,  
13 qualify for protection under this Order. Then, before producing the specified documents, the  
14 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
16 CODE”) to each page that contains Protected Material. If only a portion or portions of the  
17 material on a page qualify for protection, the Producing Party also must clearly identify the  
18 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
19 each portion, the level of protection being asserted.

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
21 Designating Party identify on the record, before the close of the deposition, hearing, or other  
22 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
23 impractical to identify separately each portion of testimony that is entitled to protection and it  
24 appears that substantial portions of the testimony may qualify for protection, the Designating  
25 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
26 a right to have up to 21 days to identify the specific portions of the testimony as to which  
27 protection is sought and to specify the level of protection being asserted. Only those portions of

1 the testimony that are appropriately designated for protection within the 21 days shall be covered  
2 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
3 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
4 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY.”

6 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
7 other proceeding to include Protected Material so that the other parties can ensure that only  
8 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
9 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
10 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 Transcripts containing Protected Material shall have an obvious legend on the title page  
13 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
14 pages (including line numbers as appropriate) that have been designated as Protected Material and  
15 the level of protection being asserted by the Designating Party. The Designating Party shall  
16 inform the court reporter of these requirements. Any transcript that is prepared before the  
17 expiration of a 21-day period for designation shall be treated during that period as if it had been  
18 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
19 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
20 actually designated.

21 (c) for information produced in some form other than documentary and for any other  
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
23 or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
25 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the  
26 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the  
27 level of protection being asserted.

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the Designating Party's  
3 right to secure protection under this Order for such material. Upon timely correction of a  
4 designation, the Receiving Party must make reasonable efforts to assure that the material is  
5 treated in accordance with the provisions of this Order.

6           **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7           6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13          6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
14 process by providing written notice of each designation it is challenging and describing the basis  
15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
16 notice must recite that the challenge to confidentiality is being made in accordance with this  
17 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
18 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
19 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
20 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
21 designation was not proper and must give the Designating Party an opportunity to review the  
22 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
23 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
24 stage of the challenge process only if it has engaged in this meet and confer process first or  
25 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
26 a timely manner.

27          6.3     Judicial Intervention. If the Parties cannot resolve a challenge without Court



1 intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding  
2 Discovery and Discovery Motions. The parties may file a joint letter brief regarding retaining  
3 confidentiality within 21 days of the initial notice of challenge or within 14 days of the parties  
4 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
5 Failure by a Designating Party to file such discovery dispute letter within the applicable 21- or  
6 14-day period (set forth above) with the Court shall automatically waive the confidentiality  
7 designation for each challenged designation. If, after submitting a joint letter brief, the Court  
8 allows that a motion may be filed, any such motion must be accompanied by a competent  
9 declaration affirming that the movant has complied with the meet and confer requirements  
10 imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the  
11 discovery matter to a Magistrate Judge.

12 In addition, the parties may file a joint letter brief regarding a challenge to a  
13 confidentiality designation at any time if there is good cause for doing so, including a challenge to  
14 the designation of a deposition transcript or any portions thereof. If, after submitting a joint letter  
15 brief, the Court allows that a motion may be filed, any motion brought pursuant to this provision  
16 must be accompanied by a competent declaration affirming that the movant has complied with the  
17 meet and confer requirements imposed by the preceding paragraph. The Court, in its discretion,  
18 may elect to refer the discovery matter to a Magistrate Judge.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating  
20 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
22 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
23 file a letter brief to retain confidentiality as described above, all parties shall continue to afford  
24 the material in question the level of protection to which it is entitled under the Producing Party's  
25 designation until the Court rules on the challenge.

## 26 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or

1 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
2 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
3 the categories of persons and under the conditions described in this Order. When the litigation has  
4 been terminated, a Receiving Party must comply with the provisions of Paragraph 14 below  
5 (FINAL DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a location and  
7 in a secure manner that ensures that access is limited to the persons authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
9 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
10 information or item designated “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
12 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
13 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
14 is attached hereto as Exhibit A;

15 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
16 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
19 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
20 Agreement to Be Bound” (Exhibit A);

21 (d) the Court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
23 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
26 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
27 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed

1 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
2 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
3 Stipulated Protective Order.

4 (g) the author or recipient of a document containing the information or a custodian or  
5 other person who otherwise possessed or knew the information.

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
7 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
8 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
9 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
10 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
12 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
13 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
14 is attached hereto as Exhibit A;

15 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
16 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
17 and (3) as to whom the procedures set forth in Paragraph 7.4(a), below, have been followed;

18 (c) the Court and its personnel;

19 (d) court reporters and their staff, professional jury or trial consultants, and Professional  
20 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

22 (e) the author or recipient of a document containing the information or a custodian or  
23 other person who otherwise possessed or knew the information.

24 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
25 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
26 Information or Items to Experts.

27 (a) Unless otherwise ordered by the Court or agreed to in writing by the Designating

1 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
2 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
3 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to Paragraph 7.3(b) first must make a  
4 written request to the Designating Party that (1) identifies the general categories of “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
6 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
7 forth the full name of the Expert and the city and state of his or her primary residence, (3)  
8 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
9 identifies each person or entity from whom the Expert has received compensation or funding for  
10 work in his or her areas of expertise or to whom the expert has provided professional services,  
11 including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6)  
12 identifies (by name and number of the case, filing date, and location of court) any litigation in  
13 connection with which the Expert has offered expert testimony, including through a declaration,  
14 report, or testimony at a deposition or trial, during the preceding five years.

15 (b) A Party that makes a request and provides the information specified in the preceding  
16 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,  
17 within 14 days of delivering the request, the Party receives a written objection from the  
18 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

19 (c) A Party that receives a timely written objection must meet and confer with the  
20 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
21 agreement within seven days of the written objection. If no agreement is reached, the Party  
22 seeking to make the disclosure to Expert may file a motion as provided in Civil Local Rule 7 (and  
23 in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do  
24 so. Any such motion must describe the circumstances with specificity, set forth in detail the

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26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
27 party, then the Expert must provide whatever information the Expert believes can be disclosed  
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
shall be available to meet and confer with the Designating Party regarding any such engagement.

1 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
2 disclosure would entail, and suggest any additional means that could be used to reduce that risk.  
3 In addition, any such motion must be accompanied by a competent declaration describing the  
4 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and  
5 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal  
6 to approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
8 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
9 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

#### 10 **8. SOURCE CODE**

11 (a) To the extent production of source code becomes necessary in this case, a  
12 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
13 if it comprises or includes confidential or trade secret source code.

14 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE  
15 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
16 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to  
17 whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be  
18 disclosed, as set forth in Paragraphs 7.3 and 7.4.

19 (c) Any source code designated "HIGHLY CONFIDENTIAL – SOURCE CODE"  
20 shall be made available for inspection, in a format allowing it to be reasonably reviewed and  
21 searched, during normal business hours or at other mutually agreeable times, at an office within  
22 this District of the Producing Party's counsel or another mutually agreed upon location. That  
23 source code shall be made available for inspection on a secured computer in a secured room  
24 without Internet access or network access to other computers, and the Receiving Party shall not  
25 copy, remove, or otherwise transfer any portion of that source code onto any recordable media or  
26 recordable device. The Producing Party shall load software code, tools, and programs onto the  
27 secured computer within a reasonable time after a request by the Receiving Party. The Receiving

1 Party and its Experts shall have the ability to save on the secure computer work product (a) that  
2 shall not be reviewed by any other Party, and (b) which the Receiving Party shall have the right to  
3 remove or transfer from the secure computer. The Producing Party may visually monitor the  
4 activities of the Receiving Party's representatives during any source code review, but only to  
5 ensure that there is no unauthorized recording, copying, or transmission of the source code.

6 (d) The Receiving Party may request paper copies of limited portions of source code  
7 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" that are reasonably necessary for  
8 the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or  
9 trial, but shall not request paper copies for the purposes of reviewing the source code other than  
10 electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide  
11 all such source code in paper form including bates numbers and the label "HIGHLY  
12 CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the amount of source  
13 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set  
14 forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the Receiving  
15 Party is the "Designating Party" for purposes of dispute resolution.

16 (e) The Receiving Party shall maintain a record of any individual who has inspected  
17 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
18 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
19 Party shall not create any electronic or other images of the paper copies and shall not convert any  
20 of the information contained in the paper copies into any electronic format. The Receiving Party  
21 shall only make additional paper copies if such additional copies are (1) necessary to prepare  
22 court filings, pleadings, or other papers (including a testifying expert's expert report), (2)  
23 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper  
24 copies used during a deposition shall be retrieved by the Producing Party at the end of each day  
25 and must not be given to or left with a court reporter or any other unauthorized individual.

1       **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
2       **OTHER LITIGATION**

3       If a Party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
6 SOURCE CODE” that Party must:

7           (a) promptly notify in writing the Designating Party. Such notification shall include a  
8 copy of the subpoena or court order;

9           (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
10 other litigation that some or all of the material covered by the subpoena or order is subject to this  
11 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

12           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
13 Designating Party whose Protected Material may be affected.

14       If the Designating Party timely seeks a protective order, the Party served with the  
15 subpoena or court order shall not produce any information designated in this action as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
18 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
19 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
20 court of its confidential material – and nothing in these provisions should be construed as  
21 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
22 another court.

23       **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
24       **THIS LITIGATION**

25           (a)     The terms of this Order are applicable to information produced by a Non-Party in  
26 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
27 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such

1 information produced by Non-Parties in connection with this litigation is protected by the  
2 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
3 prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce a  
5 Non-Party's confidential information in its possession, and the Party is subject to an agreement  
6 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

7 1. promptly notify in writing the Requesting Party and the Non-Party that  
8 some or all of the information requested is subject to a confidentiality agreement with a Non-  
9 Party;

10 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
11 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
12 the information requested; and

13 3. make the information requested available for inspection by the Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this Court within 14  
15 days of receiving the notice and accompanying information, the Receiving Party may produce the  
16 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
17 seeks a protective order, the Receiving Party shall not produce any information in its possession  
18 or control that is subject to the confidentiality agreement with the Non-Party before a  
19 determination by the Court. Absent a Court order to the contrary, the Non-Party shall bear the  
20 burden and expense of seeking protection in this Court of its Protected Material.

21 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
23 Material to any person or in any circumstance not authorized under this Stipulated Protective  
24 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
25 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
26 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
27 made of all the terms of this Order, and (d) request such person or persons to execute the



1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

2 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
3 **PROTECTED MATERIAL**

4 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
5 produced material is subject to a claim of privilege or other protection, the obligations of the  
6 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
7 provision is not intended to modify whatever procedure may be established in an e-discovery  
8 order that provides for production without prior privilege review. The parties agree that Federal  
9 Rule of Evidence 502 shall govern inadvertent production of privileged information.

10 **13. MISCELLANEOUS**

11 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
12 seek its modification by the Court in the future.

13 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
14 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
16 Party waives any right to object on any ground to use in evidence of any of the material covered  
17 by this Protective Order.

18 13.3 Filing Protected Material. Without written permission from the Designating Party  
19 or a Court order secured after appropriate notice to all interested persons, a Party may not file in  
20 the public record in this action any Protected Material. A Party that seeks to file under seal any  
21 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
22 under seal pursuant to a Court order authorizing the sealing of the specific Protected Material at  
23 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
24 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
25 otherwise entitled to protection under the law. If a Receiving Party’s request to file Protected  
26 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the Court, then the  
27 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule

79-5(e)(2) unless otherwise instructed by the Court.

**14. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in Paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Paragraph 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: January 9, 2020 /s/ David R. Eberhart

Attorneys for Plaintiff

DATED: January 9, 2020 /s/ Michael S. Kwun

Attorneys for Defendant

1  
2 **ATTESTATION**

3 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the  
4 filing of this document has been obtained from the other party signatories.

5 Dated: January 9, 2020 /s/ David R. Eberhart  
6 David R. Eberhart  
7

8  
9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10 DATED: January 14, 2020



11 Hon. Yvonne Gonzalez Rogers

12 United States District Judge  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand  
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern District  
6 of California on \_\_\_\_ [date] in the case of *Elasticsearch, Inc. and elasticsearch B.V. v. floragunn GmbH*,  
7 Case No. 4:19-cv-05553-YGR, currently pending before the United States District Court for the Northern  
8 District of California. I agree to comply with and to be bound by all the terms of this Stipulated Protective  
9 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any  
11 information or item that is subject to this Stipulated Protective Order to any person or entity except in  
12 strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the Northern  
14 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if  
15 such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone number] as my  
18 California agent for service of process in connection with this action or any proceedings related to  
19 enforcement of this Stipulated Protective Order.

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
26 [signature]